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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 161st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.161/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Paraguay (continued) (CAT/C/12/Add.3)

1. At the invitation of the Chairman, Mr. Gauto (Paraguay) took a place at the Committee table.

2. Mr. LORENZO (Country Rapporteur) read out the Committee's conclusions, adopted in closed meeting, on the initial report of Paraguay:

"1. The Committee against Torture examined the report of Paraguay at its 158th, 159th, 160th and 161st meetings, held on 10 and 11 November 1993, and adopted the following conclusions:

I. Introduction

2. The Committee thanks the State party for its report and for its cooperation in the constructive dialogue with the Committee; it takes note of the information submitted in the report and presented orally by the representative of Paraguay.

3. Paraguay has complied with its obligation to submit an initial report under article 19 of the Convention, and its second periodic report is due on 10 April 1995.

II. Positive aspects

4. The Committee regards as very positive that Paraguay now has a democratic Government and that its authorities have expressed the firm determination to promote and protect human rights and, in particular, to bring about the total and effective eradication of torture and other similar acts. It also regards as a positive step the adoption in 1992 of a new democratic Constitution that firmly enshrines fundamental human rights and expressly prohibits torture.

5. It is also encouraging that judicial proceedings are now under way to investigate grave violations of human rights, especially torture and political murders committed during the previous regime.

III. Causes for concern

6. However, the Committee is concerned, firstly, that the practice of torture continues within the police, according to serious allegations received; the victims of those practices are said to be not only adults, but also minors.

7. The Committee is also concerned about the complex situation in the prisons, which do not appear to meet the minimum requirements in order to serve as re-education centres for delinquents and not to become instruments of ill-treatment.

8. Another cause for concern is the continued lack of legal mechanisms to make clearer the prohibition of torture (which the Constitution has already established), to halt extended or incommunicado detention and, in general, to bring domestic law fully into line with the Convention. The Committee is also concerned about the absence, in practice, of a swift and firm reaction on the part of the courts to allegations of ill-treatment and torture.

9. Lastly, the Committee is concerned about the slow pace of judicial proceedings involving violations of human rights committed during the previous regime and also about Paraguay's apparently inadequate system for the civil compensation and the rehabilitation of the victims.

IV. Recommendations

10. The Committee believes that Paraguay could have a more complete mechanism for the eradication of torture if it recognized the competence of the Committee under articles 21 and 22 of the Convention.

11. The Committee hopes to receive in writing the replies that it did not obtain orally during those meetings and, in particular, comments on the information communicated to the Committee by two non-governmental organizations.

12. The Committee encourages the Government of Paraguay to finish making changes to its legislation and to bring it into line with the Convention, as well as to speed up investigations and judicial proceedings relating to torture and other similar acts.

13. The Government might wish to request the technical assistance of the United Nations Centre for Human Rights.

14. A contribution by Paraguay to the United Nations Voluntary Fund for Victims of Torture would be a gesture reflecting that State's determination to promote human rights."

3. Mr. GAUTO (Paraguay) thanked the Committee and, in particular, Mr. Lorenzo for the attention, interest and understanding shown in connection with his country. He was convinced that such efforts would bear fruit and play an important role in correcting the situation which, he hoped, would be found much improved in the report that Paraguay would submit in 1995.

4. The CHAIRMAN welcomed the fruitful dialogue initiated with the State party; he had no doubt that the next report of Paraguay would reveal perceptible progress in the human rights situation in that country.

5. Mr. GAUTO (Paraguay) withdrew.

The public part of the meeting was suspended at 3.15 p.m. with a view to the consideration, in closed meeting, of organizational matters and communications; it resumed at 4.05 p.m.

Consideration of the initial report of Poland (continued) (CAT/C/9/Add.13)

6. At the invitation of the Chairman, the Polish delegation, composed of Mr. Kedzia, Ms. Skorzewska-Lósiak and Ms. Jórecka, took seats at the Committee table.

7. Mr. KEDZIA (Poland) said that he would reply first to a question on the role and place of the non-governmental organizations in efforts to eradicate torture. He noted in that regard that the Ministry of Justice and the prison administration were working in close cooperation with the NGOs, whose activities were carried out not in a specific legal framework, but in the broader context of the Associations Act of 1989, a very liberal law that had been adopted even before the law on political parties. The Ministry of Justice authorized the Polish committees of certain NGOs to visit places of detention and officially recognized prisoners' aid organizations, such as the reactivated Employers' Prison Association, as stated in paragraph 39 of the report. Religious communities and associated lay organizations also played an important role with the detainees.

8. The debate on the abolition of the death penalty was continuing. A recent survey had revealed that a slight majority of citizens was, as in many countries, in favour of capital punishment. Hoping to promote a shift in opinion, the Polish authorities would like to incorporate the abolition of the death penalty in domestic law before acceding to international instruments that prohibited capital punishment. That approach was, in their view, more reasonable and more effective. He recalled that, in 1988, it had been decided to introduce a moratorium on the death penalty, and since then no person condemned to death had been executed, although three such sentences had been handed down. Clearly, the question of capital punishment must be resolved without delay, if only to avoid leaving those three condemned persons in a prolonged state of uncertainty.

9. The provision referred to in paragraph 15 of the report was that of article 115 of the Code of Criminal Procedure, and not the Penal Code. It was true that a foreigner could be prosecuted for a crime committed outside Polish territory. He also noted that Poland had acceded to the Geneva Conventions and the Additional Protocols.

10. As for the extension of pre-trial detention, he said that the words "up to one year" should be added after the phrase "to extend the pre-trial detention" at the end of paragraph 20 of the report so as to make clear that an appeal could be lodged with the court of second instance against a decision of the court of first instance to extend the pre-trial detention. As to the concept of serious offence, since the concept of torture as such did not exist in Polish law, crimes of torture were judged under the same rules as serious common law offences. He also pointed out that the first sentence of paragraph 28 of the report reflected an article of the Code of Criminal Procedure.

11. Replying to questions on the training of members of professions confronted with torture, he explained that the curricula of medical and law faculties included courses on human rights and torture. Students in the faculty of medicine attended a general course and a course on medical ethics.

12. He thanked members of the Committee for proposing the technical assistance of the Centre for Human Rights. As to the question raised by Mr. Ben Ammar on education in human rights in general, he said that since 1989 information on human rights had been actively disseminated in Poland with a view to creating a "human rights culture". The non-governmental organizations, as well as the Bar Association and the press, were promoting widespread awareness of human rights values, and training courses had been organized at various levels for different target groups. Two years previously, Poland and the Centre for Human Rights had concluded a special agreement that had made it possible to finance courses in human rights. The prevention of torture had an important place in the teaching of human rights.

13. A question had been asked about the difference between redress and compensation (para. 47 of the report). Redress applied in the case of moral damage and compensation in the case of damage with material consequences, for example for health. The two could be determined within the framework of criminal proceedings. There was also a "combined" procedure that grouped criminal and civil proceedings in a more rational manner. Furthermore, provision was made for compensation by the State as part of State responsibility for the actions of its officials.

14. A new procedure established under articles 23 and 24 of the Civil Code protected the individual against the actions of State officials; in that way the State incurred full responsibility. In the same spirit, any illegal act on the part of a State official was an offence under the Penal Code.

15. In the framework of the current Penal Code, the use of force or the threat of force was punishable by two years' imprisonment or a fine. Under the Code of Criminal Procedure, any testimony obtained in such conditions was inadmissible as evidence in criminal proceedings. He cited in that regard the example of a young mother whom a State official had threatened to hold in pre-trial detention if she refused to confess: the Supreme Court had ruled that such psychological pressure constituted an abuse of power; confessions so obtained could not be used in court.

16. He mentioned an act which had recently been adopted and which, while not specifically mentioning torture, covered a similar concept, namely, the Police Act of 1990, under which any police officer who used excessive force or a threat of force was liable to five years' imprisonment, as was his superior. Any State official found guilty of failing to perform his duty to prevent torture could also be punished. It had also been asked whether there was a police force other than the ordinary police. He said that there was none; although there was a State Security Office, in no way did it constitute a secret police force.

17. Questions had been raised concerning the post of ombudsman, and he said that, although it was still a very recent institution, the results were already impressive. The Ombudsman Act had been adopted in 1987 and the first ombudsman, with the assistance of a staff of 25, had had to examine 50,000 complaints in the first year. One of the major achievements of the first ombudsman had been to make the public aware of the existence and, indeed, the importance of his office. The ombudsman's independence depended in part on legislation, but also on the personality of the incumbent, who was

virtually - although not directly - a representative of parliament. Appointed by the Lower Chamber for a period of four years, he had many duties and powers. In particular, he could initiate an extraordinary appeal to the Supreme Court, institute administrative proceedings and ask the competent bodies to propose legislation. He had access to all sources of information and every year was required to submit an exhaustive report to Parliament.

18. Replying to a member of the Committee who had asked about the number of convictions for acts of torture, he said that he did not have any figures, but in 1993 (up to the end of October), 124 complaints had been lodged for excessive use of force after deprivation of liberty. None of those complaints had been confirmed, and he did not know whether that was an encouraging sign or not. In any event, if the Committee so wished, he could have figures communicated to it in writing at a later date.

19. Concerning paragraph 5 of the report, which stated that under Polish law a policeman who committed an illegal act in the execution of an order did not commit an offence if he was not aware of its illegality, he said that that was a question of principle which had long been debated in Poland, and it had been decided that the innocence of the person carrying out the order and the guilt of his superior should be maintained.

20. In respect of extradition, he said that he did not have any figures but that in any event article 3 of the Constitution was directly applicable. The Ministry of Justice took the view that no new legislation was needed on the subject. A decision to extradite could be appealed and a judgement by the court of appeal that extradition should not take place could not be overruled by the Public Prosecutor's Office.

21. He believed he had already answered the questions on paragraphs 10 and 11 of the report, and simply wished to add that article 248 of the draft penal code covered questions of torture without specifically mentioning the word.

22. There was no maximum period of detention in Poland. Pre-trial detention ordered by the Public Prosecutor's Office could last three months. The new Parliament would most certainly adopt new legislation on the subject. Pre-trial detention and detention during trial could last up to 18 months for offences punishable by less than two years' imprisonment. Detention was limited to two years for offences punishable by more than two years' imprisonment. The courts alone had the power to take decisions in that regard.

23. As to the independence of the Public Prosecutor's Office, he said that its functions were performed by the Ministry of Justice, but certain Polish specialists were in favour of its complete independence.

24. The figures on acts of violence committed against persons detained or held in police custody were as follows: between 1990 and 1993, there had been 70 complaints, and in 34 of those cases, the court had found the accused police officer guilty.

25. It was estimated that between 60,000 and 62,000 persons were at present deprived of their liberty, the figure having levelled off between 1990 and 1993. By way of comparison, it had been between 120,000 and 140,000 before 1989. That positive trend reflected the decriminalization of certain acts.

26. In reply to another question, he said that a person could be detained incommunicado for 48 hours, during which time he could see a doctor but not a legal counsel. New procedures were at present under consideration. If, at the end of the 48-hour period, the person was still being detained, a decision on pre-trial detention must be taken, following which he could see a doctor and a lawyer. Starting at that time, no representative of the Public Prosecutor's Office was present when the detainee conversed with his counsel.

27. Judges were appointed on the proposal of the National Judicial Council, whose candidates were presented to the President of the Republic. The latter had a right of veto, but could not appoint a judge without following that procedure. The National Judicial Council had 26 members: judges of courts of first instance, courts of appeal and the Supreme Court, the First President of the Supreme Court, the President of the Administrative Court, a representative of the President of the Republic, the Minister of Justice, four representatives of the Lower Chamber and two representatives of the Senate.

28. Replying to a question put by Mr. Voyame, he said that while the obligation to report offences was simply of a moral nature for private individuals, it was mandatory for State officials.

29. A member of the Committee, referring to paragraph 30, had asked about the treatment of women and minors in the framework of the reform of the Penal Code, and he explained that, since 1989, semi-penitentiary institutions had existed for those categories of detainees; such persons therefore enjoyed greater freedom, could wear their own clothes, have regular contact with their family, etc. Children under three years of age could stay with their mothers. Discipline in such institutions was also more flexible.

30. With regard to paragraph 37 of the report, he said that there were no longer any places of detention under the jurisdiction of the police, since they had been gradually closed down pursuant to the Act of 23 February 1990. All places of detention were at present under the jurisdiction of the Ministry of Justice.

31. Replying to a question concerning the right to lodge a complaint (para. 45 of the report), he explained that there was no specific law against torture in that regard and that the general procedure was applicable; any person who believed that his rights had been violated could lodge a complaint, which would be examined rapidly and impartially. Administrative complaints must be heard by a court of first instance within one month.

32. His delegation regretted that it was as yet unable to communicate reliable and definitive statistics on the perpetrators of acts of torture and similar offences to the Committee, because the new legislation for prosecuting those responsible was still being prepared. Such statistics would be transmitted as soon as possible.

33. The question of incorporating international instruments into Polish legislation was very complex in the present context. Certain treaties ratified by Poland had been embodied in Polish legislation; others had not, and were sometimes applied by the courts ex proprio vigore. The present trend was encouraging, because Polish legislation was applied in the light of international instruments and the number of instruments incorporated in its legislation was growing.

34. The CHAIRMAN thanked the Polish delegation for the replies it had given to the members of the Committee and announced that the conclusions of the Committee would be communicated to it in a public meeting.

35. The Polish delegation withdrew.

The public part of the meeting was once again suspended at 5.15 p.m. with a view to the consideration, in the closed part, of the draft conclusions on Poland; it resumed at 5.50 p.m.

Initial report of Poland (continued) (CAT/C/9/Add.13); conclusions

36. The Polish delegation resumed its place at the Committee table.

37. Mr. MIKHAILOV read out the Committee's conclusions on the initial report of Poland:

"The Committee considered the initial report of Poland (CAT/C/9/Add.13) at its eleventh session, on 11 November 1993, and adopted the following observations:

1. The Committee thanks Poland for its report, which was prepared in accordance with its guidelines, and is grateful to it for having begun a fruitful dialogue with the Committee through a highly qualified delegation. Even though it is two and one half years late, the report is in keeping with the requirements of the Convention and the general guidelines concerning the form and contents of initial reports.

2. Poland is the first eastern European country to bring about broad and far-reaching reforms in all areas - political, economic, social, legislative, etc. It ratified the European Convention on Human Rights and the Convention against Torture without reservations, as well as other international human rights instruments.

3. The Committee notes with satisfaction the considerable progress made by the Government of Poland in combating the various forms of torture. The reform of prison legislation is of a high standard.

4. At the same time, the Committee notes with concern that the reforms of criminal legislation and criminal procedure are overdue and incomplete.

(a) There is no definition of torture;

(b) The Public Prosecutor has more powers than the courts;

(c) There are no special provisions for compensating the victims of torture;

(d) Pre-trial detention lasts too long.

5. The Committee recommends that the Government of Poland should:

(a) Take the necessary steps to have the new draft Penal Code and Code of Criminal Procedure adopted, thus solving the specific problems brought about by torture;

(b) Guarantee and ensure adequate redress and compensation for the victims of torture;

(c) Formulate a specific training programme on torture for civilian and military personnel, lawyers and the medical profession.

The Committee hopes to receive information from the State party on the questions raised by the members of the Committee which have not been answered."

38. Mr. KEDZIA expressed his gratitude to the Committee for the attention it had given to the consideration of his country's initial report. Dialogue was essential, even if many problems could not be solved easily or rapidly. Commenting briefly on the conclusions of the Committee with regard to the compensation of torture victims, he stressed that although there were no special provisions on the subject, they could claim and obtain redress on the basis of well-formulated general provisions. Concerning the late submission of the report, he hoped that the Committee would show understanding towards a State during a transitional period that was endeavouring to adopt a large number of new legislative texts.

39. The CHAIRMAN took due note of the final remarks of the representative of Poland and warmly thanked the Polish delegation for its initial report and spirit of cooperation.

The meeting rose at 6 p.m.